IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.762/2003.
(Chanda Devi Vs. State of Rajasthan & Another)

DATE OF ORDER : May 11th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. N.L. Joshi for the petitioner.
Mr. S.N. Tiwari, P.P.
Mr. M.K. Garg for the non-petitioner.

BY THE COURT :

By this revision petition, the petitioner complainant is challenging the validity of the order dated 17.06.2003 passed by learned Addl. Sessions Judge, Churu by which the revision petition filed by non-petitioner No.2 was allowed and cognizance order passed against him on 18.10.2000 by the Chief Judl. Magistrate, Churu in Criminal Case No.576/2000 was set aside.

According to facts narrated in the petition, it is contended that a complaint was filed against non-petitioner and other police officials by the petitioner complainant in which it was contended that on

15.06.1998 when the complainant's husband was out of home, at that time, in the morning at about 7 A.M., 2 – 3 police personnel entered in their house and non-petitioner No.2 Mohanlal, C.I. was also among them. The complainant alleged that they forcibly took her with them and in the police station Kotwali where other police officials were also present, they assaulted her and used filthy language. It is further stated that the non-petitioner and one Hidayat Khan inflicted injuries upon her private parts. At that time, some persons witnessed the incident. It is also stated that non-petitioner No.2 and other persons conspired and threatened the complainant for recovery of the amount which was said to be taken away by one Amla Prasad, Constable from the malkhana. Certain other allegations were also levelled with regard to sale of land to one Hidayat Khan and Amra Ram, Constables.

Upon this complaint, the learned Chief Judl. Magistrate recorded the statements of Dhanna Ram, Chandadevi, complainant, Chetan, Subhash and Sheopuri. After recording statements under Section 202, Cr.P.C. cognizance order was passed on 18.10.2000. The said order of taking cognizance for offences under Sections 323, 342, 354, 327 and 363, I.P.C. against inter alia the non-petitioner. Against order dated 18.10.2000, the non-petitioner No.2 preferred revision petition before the Sessions Court, Churu which was transferred for disposal to the learned Addl. Sessions judge, Churu who decided the same vide the impugned order dated 17.06.2003 whereby the revisional Court while holding that non-petitioner No.2 was the investigating officer in the FIR

No.168/1998, registered for offence under Section 409, I.P.C. and, during the said investigation, the alleged incident took place, came to the conclusion that there was no injury report on the record and, so also, the fact that non-petitioner No.2 was investigating into the matter of a particular case, therefore, being the investigating officer, non-petitioner No.2 was discharging his official duties and as such there is protection extended in his favour under Section 197, Cr.P.C. Therefore, the revisional Court held that the cognizance taken by the learned trial Court was illegal and accordingly, the learned Addl. Sessions Judge, Churu vide order dated 17.06.2003 set aside the order of taking cognizance.

Learned counsel for the petitioner complainant vehemently argued that it is true that non-petitioner No.2 was investigating officer of the FIR No.163/1998 but no licence can be given to the investigating officer to assault or indulge himself in criminality which is certainly out of his public duties. According to facts of the case, it cannot be said that at the time the incident took place the non-petitioner was discharging his official duty, therefore, the learned revisional Court committed error while quashing the order taking cognizance against the non-petitioner. It is contended that before the trial Court certain authorities were cited from the side of the petitioner complainant and by the counsel for non-petitioner No.2. However, the revisional Court while observing in the order that non-petitioner No.2 was the investigating officer of the FIR No.163/1998 for offence under

Section 409, I.P.C. in which Amla Prasad, Chanda Devi and Dana Ram were the accused among whom Amla Prasad, Constable is alleged to have committed embezzlement of Rs.3,38,280/- of the malkhana of the police station. In that FIR, non-petitioner No.2 was the investigating officer. The learned revisional Court while arriving at the finding that non-petitioner No.2 was the investigating officer and according to Section 197, Cr.P.C. there is protection provided to the investigating officer and sanction is required to be obtained from the State Government prior to launching prosecution and no Court can take cognizance if there is no sanction by the Government to prosecute. On these grounds, while following Section 197, Cr.P.C., the revisional Court set aside the order of taking cognizance on the ground that there is protection in favour of the police official if any act is purportedly done during the discharge of his official duties. The State Government has also issued a notification on 31.07.1974 to this effect.

I have considered the rival submissions.

Admittedly, in this case, according to the petitioner complainant, non-petitioner No.2 was the investigating officer in FIR No.163/1998 in which one Amla Prasad, Constable and petitioner alongwith one other person are accused and the alleged incident is said to have occurred during the course of investigation in that matter. Therefore, obviously if anything is done during the course of investigation and discharging official duties then sanction is required to be obtained under Section 197, Cr.P.C. for launching prosecution against the police official.

Learned counsel for non-petitioner No.2 relied upon certain judgments reported in 2000 Cr.L.R. (SC) 813 and 2004 SCC (Cri.) 539 and contended that Court cannot take cognizance upon complaint against public servant unless sanction for prosecution is obtained from the appropriate authority.

In the latest judgment, reported in 2006 Cr. L.R. (SC) 295, it is held by the Supreme Court that sanction for prosecution under Section 197, Cr.P.C. is mandatory if the incident alleged is in relation to discharge of official duty by the government servant. The apex Court held as follows :

> "The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty Section 197(1) of the Code cannot be by-passed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the es6tagblished procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of

> a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore, satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage."

Further, the notification issued by the State Government in this respect may also be noted which reads as follows :

> "HOME (Gr.VI) DEPARTMENT
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> NOTIFICATION
>
> Jaipur, July 31, 1974
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> S.O.89.-In exercise of the powers conferred upon it under sub-section (3) of Section 197 of the Code of Criminal Procedure 1973, the State Government hereby direct that the provisions of sub-section (2) of the said Section shall apply to police officials, of all ranks, charged with the maintenance of public order, where-ever they may be serving.
>
> [No.F.20(7) Home (Gr.VI)/74.]"

In these circumstances, it is apparently clear that in this case non-petitioner No.2 was discharging official duty and was the investigating officer in FIR No.163/1998 in which while investigating into the matter the incident is alleged to have occurred being the cause of complaint and, therefore, the learned revisional Court has rightly observed that besides the fact that there is no medical evidence to corroborate the allegations levelled by the complainant, cognizance in the matter could not have been taken without the sanction of the

Government required to be obtained under Section 197, Cr.P.C. before launching prosecution and, therefore, the order of taking cognizance could not be sustained in law. Hence no interference is called for in the case.

The revision petition is hereby dismissed. Record of the trial Court be sent back forthwith.

(Gopal Krishan Vyas) J.